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January 28, 2011

VIA ECF

Hon. Jose L. Linares, U.S.D.J.
United States District Court for the
District of New Jersey
Martin Luther King, Jr. Federal Building
50 Walnut Street, Room 2042
Newark, New Jersey 07101

Re: *Larson, et al. v. AT&T Mobility LLC f/k/a Cingular Wireless LLC, et. al.*
Civ. No.: 07-5325 (JLL)

Dear Judge Linares:

This firm represents Sprint Nextel Corporation, Sprint Spectrum L.P. d/b/a Sprint Nextel and Nextel Finance Company ("Defendants") in the above-referenced matter. This letter is in response to Alan R. Plutzik's letter of January 26, 2011 (incorrectly dated January 26, 2010). Mr. Plutzik's letter advocates for a dismissal of the pending Order to Show Cause ("OSC") seeking to hold Ms. Zill and her counsel, including Mr. Plutzik, in contempt for violating the Injunction in the Final Judgment. Mr. Plutzik's basis for this argument is that he has filed a Motion to Stay the California Appeal pending the outcome of the appeals in the above-referenced matter currently pending before the Third Circuit.

Mr. Plutzik's argument is wholly without merit. Indeed, the very fact that Mr. Plutzik believes that a stay of the California Appeal should be based, not upon the Injunction in the Final Judgment, but upon the good graces of a motion by Ms. Zill, only further supports the need for a finding of contempt. I will not burden the Court with another recitation of the numerous steps that Ms. Zill and her counsel have taken in direct violation of the Injunction in the Final Judgment. However, it bears repeating that by letter dated December 7, 2010 Sprint requested that Ms. Zill and her counsel cease prosecuting the appeal and that it is only now, after considerable time and expense was expended by both Sprint and this Court, that Ms. Zill and her counsel sought a stay.[1] Sprint further notes that the argument in support of the Motion to Stay the California Appeal, which Ms. Zill and her counsel asked this Court to take judicial notice of, fails to mention the existence of the Injunction or the fact that, by its very terms, this Court's Injunction should be the reason for a stay. In fact, in the stay motion Mr. Plutzik states that "appellee Sprint Spectrum, L.P. does not oppose the request for a stay." Mr. Plutzik cites, as support for this, his declaration at paragraph 4 which references Exhibit 2 thereto. *See* Doc. No. 616, pg. 7 of 88. However, in reproducing the excerpt from Exhibit 2, in the text of the Motion to Stay the California Appeal, Mr. Plutzik edits Sprint's position as follows:

> Our position is that the injunction in the Final Judgment is the reason that a stay must be, and in fact, always has been in place. Accordingly, we would not oppose plaintiff's stay request …

Doc. No. 616, pg. 11 of 88. What is missing, through the use of the ellipses, is that Sprint "would join in a stay request that acknowledges the effect of the Injunction in the Final Judgment." *See* Doc. No. 616 at pg. 87 of 88. The failure to include this language by Mr. Plutzik, in the stay motion itself, is a rejection of Sprint's offer to join in the stay application. It is also a rejection by Ms. Zill and her counsel of the effect of the Injunction in the Final Judgment. That continued rejection of the effect of the Injunction is further evidence of contempt.

Sprint requests that the Court hear the OSC on the scheduled return date of February 8, 2011. Sprint does not object to the Court taking judicial notice of Ms. Zill and her counsel's Motion to Stay the California Appeal.

Thank you for Your Honor's attention to this matter.

Respectfully submitted,

s/ Joseph A. Boyle

Joseph A. Boyle

JAB:mc
cc: All Counsel via ECF

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1 Sprint has consented to the stay of the California Appeal and continues to believe that the stay is appropriate but will leave for another day the appropriate steps to be taken with respect to the disposition of that appeal once the Third Circuit rules.